

SEP 13 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JULIO ERNESTO MARTINEZ-
ESCOBAR,

Defendant - Appellant.

No. 05-10387

D.C. No. CR-04-01224-SRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Submitted September 11, 2006**
San Francisco, California

Before: FERNANDEZ, W. FLETCHER, and RAWLINSON, Circuit Judges.

Julio Ernesto Martinez-Escobar (Martinez-Escobar) appeals the district court's sentence pursuant to his plea agreement. Martinez Escobar admits that he knowingly, voluntarily, and intelligently waived his right to appeal, but contends

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

that this waiver is invalid because the sentence exceeded the district court's statutory authority post-*Booker*.

The district court did not exceed its statutory authority by accepting the plea agreement and imposing sentence under the sentencing guidelines, as agreed by the parties. Although “the scheme of downward and upward departures [has been] essentially replaced by the requirement that judges impose a ‘reasonable’ sentence,” this court treats “such so-called departures as an exercise of post-*Booker* discretion to sentence a defendant outside of the applicable guidelines range.” *United States v. Mohamed*, - - - F.3d - - - -, No. 05-50253, 2006 WL 2328722, *6 (9th Cir. August 11, 2006). Moreover, an “illegal sentence” is one “not authorized by the judgment of conviction or in excess of the permissible statutory penalty for the crime.” *United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (citation and internal quotation marks omitted). As Martinez-Escobar does not contend that his sentence was either unauthorized by the conviction or in excess of the permissible statutory penalty, the sentence was not illegal and the exception to a valid appeal waiver does not apply. Because Martinez-Escobar admits his waiver was otherwise knowing and voluntary, the waiver is valid. *United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000). Thus, the appeal must be

dismissed. *See United States v. Pacheco-Navarette*, 432 F.3d 967, 971 (9th Cir. 2005).

DISMISSED.